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**ORIGINAL**  
Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Petition of )  
 )  
UNITED STATES CELLULAR CORPORATION ) CC Docket No. \_\_\_\_\_  
 )  
To Delete or Nullify the Effect )  
Of Footnote 3 of the Commission's )  
Final Order in CC Docket No. ) 14-11  
90-257 )

To: The Commission

**OPPOSITION TO MOTION TO STRIKE**

Potosi Company ("Potosi"), by its attorneys, and pursuant to Section 1.45(a) of the Commission's Rules, 47 C.F.R. § 1.45(a), hereby opposes the "Motion to Strike" ("Motion") filed by United States Cellular Corporation ("USCC") with respect to the "Response to Reply" ("Response") submitted by Potosi in the above-captioned proceeding.

1. USCC is understandably upset that Potosi rebutted the declarations of H. Donald Nelson, USCC's President, and Arthur Belendiuk, counsel to La Star Cellular Telephone Company. However, USCC overstates its procedural arguments to the point of hyperbole.

2. USCC understandably argues that Potosi filed an unauthorized pleading without asking leave to do so.<sup>1/</sup> In retrospect, it may have been better form to have done so. However, that procedural lapse hardly warrants the charge that Potosi was

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<sup>1/</sup> USCC complains that Potosi did not ask for "leave to file" its Response. See Motion, at 1. Of course, USCC has been guilty of filing unauthorized pleadings without seeking leave to do so. See USCC, Response to Supplemental Comments, File No. MSD-91-26 (filed Jan. 17, 1992).



guilty of a "blatant" abuse of process, or the allegation that it is attempting "to harass USCC and to deny USCC . . . due process." See Motion, at 2.

3. USCC should be the last to be heard to complain about the filing of an "unauthorized pleading" and the resultant denial of "due process." See Motion, at 2. The Commission will recall that it was USCC that commenced this proceeding by submitting a 57-page unauthorized pleading to "delete or nullify" a footnote in a final Commission order that was undergoing judicial review at USCC's request.<sup>2/</sup>

4. USCC did not confine its efforts to showing why Potosi's Response should be stricken. Half of the Motion consisted of USCC's unverified substantive arguments. Because USCC has responded on the merits, the Commission can consider the Response and USCC's substantive rejoinder. See Newhouse Broadcasting Corp., 61 FCC 2d 528, 529 (1976); Columbia Broadcasting System, Inc., 46 FCC 2d 903, 905-6 (1974); Scripps-Howard Broadcasting Co., 26 FCC 2d 824, 825 (1970). Consequently, there is no need for the Commission to strike anything. The Motion is effectively moot, and should be denied.

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<sup>2/</sup> Among USCC's colorful verbiage is the claim that the Response is an "illegitimate desire to have the last word." See Motion, at 2. Talk about trying to get the last word! USCC gave its evidence in the La Star hearing, unsuccessfully sought Commission review, and now is arguing its case before the District of Columbia Circuit Court of Appeals. Then, while the La Star matter was still before the Court, USCC turned around and dredged the matter up again before the Commission. Now, having opened a Pandora's box, USCC does not like the evidence that came out.



For all the foregoing reasons, Potosi respectfully requests that the Commission deny the Motion and consider the Response.

Respectfully submitted,

POTOSI COMPANY

By



Russell D. Lukas  
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May 3, 1993



CERTIFICATE OF SERVICE

I, Katherine A. Baer, secretary in the law offices of Lukas, McGowan, Nace & Gutierrez, Chartered, do hereby certify that I have on this 3rd day of May, 1993, sent by first-class United States mail, copies of the foregoing OPPOSITION TO MOTION TO STRIKE to the following:

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A handwritten signature in cursive script, appearing to read "Katherine A. Baer", written over a horizontal line.

Katherine A. Baer